



**DEPARTMENT OF JUSTICE**  
Antitrust Division

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April 7, 2000

Kenneth A. Letzler, Esq.  
Richard M. Lucas, Esq.  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1202

Dear Messrs. Letzler and Lucas:

This letter responds to your request on behalf of the Apparel Industry Partnership (“AIP”) for the issuance of a business review letter pursuant to the Department of Justice’s business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department’s current antitrust enforcement intentions with respect to AIP’s proposal to promote the adoption of a Workplace Code of Conduct (“the Code”), to allow firms that comply with the Code to advertise their compliance, and to monitor whether claims of compliance are accurate.

In your request, you assert that sweatshop manufacturing conditions, *i.e.*, situations in which employees work long hours for low wages under unsafe or unhealthful working conditions, have increased in the apparel and footwear industries in recent years both in the United States and abroad. In response to publicity about such working conditions, President Clinton, in August 1996, convened a meeting of United States apparel and footwear manufacturers, as well as labor unions, consumer, human rights, and religious organization representatives, and urged them to develop standards for working conditions that would eliminate sweatshop conditions, and to allow adherents to those standards to convey the fact of such adherence to the consuming public.

After that meeting at the White House, representatives of industry, unions, consumer, human rights, and religious organizations formed an informal group denominated the Apparel Industry Partnership. Prior to developing workplace standards designed to reduce sweatshop

conditions, AIP sought a business review statement from the Department of Justice with respect to its proposed efforts to develop such standards and the means of ascertaining whether a firm

actually conducted its manufacturing operations in compliance with such standards. On October 31, 1996, the Department of Justice indicated that it would not challenge AIP's efforts to develop a Workplace Code of Conduct and Compliance Monitoring procedures provided that various steps were taken by AIP's participants to avoid the exchange amongst rivals of competitively sensitive information. It was understood at that time that AIP would seek a statement of the Department's antitrust enforcement intentions before it implemented any Workplace Code of Conduct and Monitoring Principles that were developed by the groups. The current business review request fulfills AIP's pledge.

The initial members of AIP were those invited to the aforementioned White House meeting. The guest list was supposed to reflect a representative sample of apparel and footwear manufacturers as well as representatives from union, consumer, human rights and religious organizations. Several of the original members have dropped out and others have joined subsequent to the White House meeting. Current members include Kathie Lee Gifford, Liz Claiborne, Inc., Nicole Miller, L.L. Bean, Nike, Reebok, Phillips Van Heusen, International Labor Rights Fund, Lawyers Committee for Human Rights, National Consumers League, Robert F. Kennedy Memorial Center for Human Rights and a number of universities. Adidas-Solomon A.G. and Levi Strauss & Co. also have indicated an interest in affiliating with the AIP. You assert that, with the exception of Nike and Reebok, the participants "hold relatively minor shares in the multibillion dollar United States apparel industry".

The AIP has agreed to establish a Workplace Code of Conduct and to allow firms that choose to comply with that Code for some or all of their products to advertise the fact of their compliance. In this manner, consumers who ascribe importance to the fact that the products they buy are made under "reasonable" or "humane" working conditions will be provided information relevant to their purchasing concerns. No firm would be required or obligated to comply with the Code.

The proposed Workplace Code of Conduct provides that adherents will not use forced labor or child labor (as defined). Employees will not be subjected to physical or mental abuse or harassment, or various types of discrimination. Employers will maintain "a safe and healthy working environment", and will recognize and respect the rights of employees to freedom of association and collective bargaining. Employers will pay employees the higher of legally required minimum wages or the prevailing industry wage. Employees may not be required to work more than the lesser of (a) 48 hours per week and 12 hours overtime or (b) the legal limits on regular and overtime work. Employees also will be entitled to at least one day off in every seven day period. Overtime will be compensated at the higher of the legally required level or at a rate equal to the regular hourly compensation rate. All adherents to the Code must also require their licensees and contractors, and in the case of retailers their suppliers, to abide by the higher of the Code or local law.

AIP has developed a set of Monitoring Principles to ensure that firms that publicly proclaim adherence to the Workplace Code of Conduct are in fact complying with those standards. Such firms must adopt internal monitoring procedures consistent with the AIP Principles of Monitoring and agree to employ an external monitor that will monitor the firm according to those Principles. Members of the AIP also have formed a nonprofit association, called the Fair Labor Association ("FLA"), that will establish both the criteria for qualifying external monitors and the baseline monitoring practices to be used by such monitors.

AIP asserts that the proposed Code and Monitoring Principles will not have any adverse

effects on U.S. consumers. You note that the impetus for the Code was not typical of a cartel or other restrictive agreements, *i.e.*, the desire of rivals to enhance profits by reducing competition, but rather was founded in “concerns about public policy forcefully articulated by the President and echoed by the human rights, labor, consumer, and religious communities”. The Code and Monitoring Principles were developed in meetings attended by government officials with full knowledge that they would be submitted to the Government for antitrust review prior to implementation. You have emphasized the voluntary nature of any firm’s decision to comply with the Code. Moreover, you contend that the restrictions against employee harassment and abuse, discrimination, forced labor, child labor, unsafe or unhealthy working conditions, and interference with employee freedom of association and collective bargaining are not likely to increase costs, and may in fact increase productivity. While you recognize that compliance with the minimum wage and maximum hours provisions of the Code could increase manufacturing costs, you assert that “it is extremely unlikely that widespread utilization of the Workplace Code would have an appreciable impact on the prices or output of apparel and footwear products sold in the United States”. In support of that assertion, you note that “labor typically accounts for less than 3% of the United States retail price of clothing made in domestic sweatshops and as little as 0.5% for garments sewn abroad”.<sup>1</sup> Under such circumstances, you suggest that there is no reason to presume a link between increased wages and increased costs.

You further contend that the development of the Code and Monitoring Principles will have a procompetitive effect, in that firms that advertise their adherence to the Code will provide useful information to consumers who are concerned about the conditions under which apparel and footwear are produced.

Based on the information and assurances that you have provided, the Department of Justice has no current intention to institute antitrust enforcement action against the implementation of the AIP’s Workplace Code of Conduct and Monitoring Principles. Under the circumstances you have asserted, it is far from clear that adherence to the Code will have any adverse effect on the prices paid by United States consumers of apparel or footwear. Moreover, to the extent that a firm’s ability to advertise compliance with the Code provides useful purchasing information to a substantial number of consumers, it is possible that development of the Code and Monitoring Principles will have a net procompetitive effect.

This letter expresses the Department’s current enforcement intentions, and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual implementation of the Workplace Code of Conduct or the Monitoring Principles prove to be anticompetitive in any purpose or effect.

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<sup>1</sup> You indicate that labor also accounts for a very small percentage of the United States retail price of footwear, noting that in 1994 labor accounted for less than 5% of the United States retail price of domestically produced footwear, and (in the early 1990s) between 1.6 and 3.3% of the United States retail price of footwear produced in certain countries.

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

/S/

Joel I. Klein